

4-20-2017

State v. Vazquez-Guzman Respondent's Brief Dckt. 44573

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Vazquez-Guzman Respondent's Brief Dckt. 44573" (2017). *Not Reported*. 3645.
https://digitalcommons.law.uidaho.edu/not_reported/3645

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44573
Plaintiff-Respondent,)	
)	Jerome County Case No.
v.)	CR-2012-3408
)	
FRANCISCO JAVIER VAZQUEZ-GUZMAN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Vazquez-Guzman failed to establish that the district court abused its discretion by revoking his probation?

Vazquez-Guzman Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Vazquez-Guzman pled guilty to operating a vehicle without owner's consent and to misdemeanor driving without privileges (DWP), and the district court imposed a unified sentence of five years, with two years fixed, suspended the sentence, and placed Vazquez-Guzman on supervised probation for three years. (R., pp.182-89.)

Three months later, the state filed a motion to revoke Vazquez-Guzman's probation, alleging Vazquez-Guzman had violated his probation by changing residences without permission and consuming alcohol on multiple occasions. (R., pp.206-10, 214-20.) Vazquez-Guzman admitted the violations at a hearing on September 15, 2014. (R., p.239.) That same day, the state filed a second motion to revoke probation, alleging that, after bonding out of jail on the original probation violations, Vazquez-Guzman failed to report his address to his supervising officer and also failed to return to his MRT class. (R., pp.241-45.) On September 29, 2014, at the disposition hearing for the original probation violations, the district court indicated it would "give [Vazquez-Guzman] 90 days to get into compliance with probation," and it continued the disposition hearing until December 15, 2014. (R., p.250.)

On November 20, 2014, the state filed a third motion to revoke probation, alleging that Vazquez-Guzman had been arrested in October 2014 for providing false information to a law enforcement officer, had failed to maintain employment, and had tested positive for alcohol. (R., pp.252-56, 258-61.) The district court noted the newest allegations at the December 15, 2014 disposition hearing on Vazquez-Guzman's admissions to the violations alleged in the original report of violation and, after considering the record and the objectives of sentencing, the court revoked Vazquez-Guzman's probation, ordered his sentence executed, and retained jurisdiction. (R., pp.267-75.) Following the period of retained jurisdiction, the court suspended the balance of Vazquez-Guzman's sentence and reinstated him on probation for a period of three years. (R., pp.282-87.)

Approximately 11 months later, on March 10, 2016, the state filed a fourth motion to revoke probation, alleging that, since being released to community supervision following his rider, Vazquez-Guzman had been convicted of misdemeanor DWP, had failed to submit to drug testing, had failed to participate in rehabilitative programming, and had changed residences without permission. (R., pp.310-15.) The state attempted to serve Vazquez-Guzman with a summons to appear on the probation violation allegations, but Vazquez-Guzman “could not be found.” (R., pp.316-25.)

On March 29, 2016, and again on May 20, 2016, the state filed a fifth motion to revoke probation, alleging Vazquez-Guzman had violated his probation by failing to report as directed, changing residences without permission, failing to maintain employment, failing to “show” for urinalysis testing on multiple occasions, failing to enroll in MRT, failing to make any payments towards his court ordered financial obligations, and failing to pay the costs of supervision. (R., pp.326-44.) Vazquez-Guzman admitted all but one violation (failing to maintain employment) (R., pp.355-56; Tr., p.5, L.1 – p.14, L.1), and the district court revoked his probation and ordered his sentence executed (R., pp.358-62). Vazquez-Guzman timely appealed from the order revoking his probation. (R., pp.366-69, 375-78.)

Vazquez-Guzman asserts that the district court abused its discretion by revoking his probation in light of his focus on work rather than treatment, his young age, and because he claims he maintained his sobriety in the last year of probation. (Appellant’s brief, pp.4-6.) Vazquez-Guzman has failed to establish an abuse of discretion.

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court.

State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider “whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society.” Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Vazquez-Guzman is not an appropriate candidate for probation. In a three-year period, Vazquez-Guzman amassed 15 misdemeanor convictions for crimes such as driving without privileges, consuming alcohol under 21, petit theft, failure to purchase or invalid driver’s license, battery, and evidence destruction. (PSI, pp.7-10.) Vazquez-Guzman also has a history of failing to comply with court orders and the terms of community supervision. (PSI, p.11.) In this case alone, the state filed five separate motions to revoke Vazquez-Guzman’s probation based on allegations that he violated the terms of his release in multiple ways, including by committing new crimes, consuming alcohol, failing to maintain employment, changing residences without permission, and failing to report for supervision. (R., pp.206-10, 214-20, 241-45, 252-61, 310-15, 326-44.) Even after the district court showed leniency by giving him “90 days to get into compliance with probation,” Vazquez-Guzman demonstrated an inability or unwillingness to conform his behavior either to the law or to the conditions of probation, as his probation officer alleged he committed a new crime (providing false information to a law enforcement officer), failed to maintain employment and/or or notify his supervising officer of any change in his employment, and tested positive for alcohol. (R., pp.252-56, 258-61.)

At the disposition hearing for Vazquez-Guzman's second *adjudicated* probation violation, the district indicated it was well aware of the history of this case, and that it showed Vazquez-Guzman was "not able or willing to be compliant" with community supervision. (Tr., p.18, L.14 – p.19, L.7, p.23, Ls.11-17.) The district court correctly observed that the goal of rehabilitation had not been attained despite the numerous opportunities Vazquez-Guzman was given, and community supervision was no longer an option. (Tr., p.23, Ls.18-24.) Probation was clearly not serving the purpose of rehabilitation in this case, as evinced by Vazquez-Guzman's repeated refusals to comply with the terms of community supervision.

Vazquez-Guzman's refusal to comply with the conditions of community supervision and his failure to make any rehabilitative progress while in the community did not merit continued probation. Given any reasonable view of the facts, Vazquez-Guzman has failed to establish that the district court abused its discretion by revoking his probation.

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking probation.

DATED this 20th day of April, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of April, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General